

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DONALD WESTMORELAND, )  
Petitioner, )  
v. ) 1:05CV00829  
EDDIE L. ROSS, Supt., )  
Cleveland Correctional Ctr., )  
Respondent. )

**J U D G M E N T**

On December 13, 2005, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. No objections were filed within the time limits prescribed by Section 636.

Therefore, the Court need not make a de novo review and the Magistrate Judge's Recommendation is hereby adopted.

**IT IS THEREFORE ORDERED AND ADJUDGED** that respondent's motion for summary judgment and to dismiss this case for having unexhausted claims (docket nos. 3 & 4) and petitioner's motion to dismiss this case without prejudice (docket no. 10) are granted, and this action is dismissed without prejudice, and that finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is denied.



James A. Beasley, Jr.  
United States District Judge

February 16, 2006